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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/731,110

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Fabien Lavoie

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EXAMINER

GREENHUT, CHARLES N

ART UNIT

PAPER NUMBER

3652

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DELIVERY MODE

08/14/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/731,110	<b>Applicant(s)</b> LAVOIE, FABIEN	
	<b>Examiner</b> CHARLES N. GREENHUT	<b>Art Unit</b> 3652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 May 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 May 2008 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

**I. Amendment**

1. The proposed amendments to the drawings and specification entered 5/29/08 are objected to as containing new matter. The size and placement of the second track along with the changes in other elements (e.g., 21) to accommodate the second track is not disclosed in the application as originally presented and therefore constitutes new matter.

**II. Drawings**

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the
  - 1.1. two endless tracks of claim 23
  - 1.2. first and second degree of actuation of claim 23
  - 1.3. mercury trigger of claim 24must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.
2. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted

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after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### **III. Claim Rejections - 35 USC § 102**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claim(s) 21-23 is/are rejected under 35 U.S.C. 102(b) as being anticipated by JESPERSEN (US 3,765,258 A).

1.1. With respect to claim(s) 23, JESPERSEN discloses a support surface (13) adapted to fixedly support a load (e.g., vertically), two endless tracks (27) connected to the support surface (13), adapted to propel the apparatus (11), on an inclined surface (Col. 1 Li. 8 et seq.), first and second degree of actuation (25) within each track (27), the apparatus (11) rotating by cycling the degrees of actuation (25) in opposite directions (Col. 9 Li. 65- Col. 10 Li. 1).

1.2. With respect to claim(s) 21-22, JESPERSEN discloses support surface (13) adapted to fixedly support a load (e.g., vertically), pairs of wheels at the front (25) and rear (445) of the support surface (13), endless track (27) connected to the wheels (25)/(445) some of which have longitudinal fingers (325) meshing with

complimentary fingers (535) on the endless track (27) adapted to propel the apparatus (11), on an inclined surface (Col. 1 Li. 8 et seq.), power source (141), brake (144) (the motor may be employed for stopping and therefore the transmission elements considered a brake within the broadest reasonable interpretation of the term e.g., motor braking), having fingers (teeth) engaged with the fingers (teeth) of at least one of the wheels (195) to prevent unwanted displacement.

#### **IV. Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claim(s) 1-4, 6, 10-12, and 23-24 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over CATES (US 2,902,101) in view of CARSTENS (US 6,336,642 B1).

1.1. With respect to claim 1, CATES discloses a support surface (47), endless track (38), power source (33) and an anti-roll device being at least one arm (52) projecting longitudinally away from the support surface (47). CATES fails to disclose that the anti-roll device is completely above a plane of an undersurface of the apparatus. CARSTENS teaches an anti-roll device (30) located completely above a plane of an undersurface (Fig. 4) and capable of being free of contact with an inclined surface. It would have been obvious to one of ordinary skill in the art to modify CATES with the safety device of CARSTENS in order to prevent falling down the stairs. Such

modification constitutes simple substitution of one location of an element for another in order to yield the predictable result of discouraging tipping.

- 1.2. With respect to claims 2-4, 6, 10-12, CATES additionally discloses an arm projecting rearwardly (52), displaceable from a retracted position, not projecting, to a projecting position. (Col. 2 Li. 68 et seq.), actuation of the arm is automated as a function of inclination (53), a roller system selectively deployable for displacing the apparatus without the endless track (49), the support surface pivotally displaceable, the support surface displaceable with respect to a height, a cylindrical roller (Col. 3 Li. 38-41).
- 1.3. With respect to claim(s) 24, Applicant admits that mercury triggers are known in the art [0036]. Employing such a mechanism would constitute simple substitution of one known element for another in order to obtain the predictable result of determining inclination angle, and, therefore, would have been obvious to one having ordinary skill in the art.
2. Claim(s) 5 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over CATES in view of CARSTENS and further in view of JESPERSEN (US 3,765,258 A).
  - 2.1. With respect to claim(s) 5, the driving and braking apparatus is known in the art, as demonstrated, for example, by JESPERSEN. JESPERSEN teaches endless track (27) connected to wheels (25) which have longitudinal fingers (325) meshing with complimentary fingers (535) on the endless track (27) further comprising a brake (144) (the motor may be employed for stopping and therefore the transmission elements considered a brake within the broadest reasonable interpretation of the term

e.g., motor braking), having fingers (teeth) engaged with the fingers (teeth) of at least one of the wheels (195) to prevent unwanted displacement. Employing the driving arrangement of JESPERSEN constitutes simple substitution of one known element for another in order to obtain the predictable result of controllably actuating the locomotion means (e.g., the track), and therefore, would have been obvious to one having ordinary skill in the art.

3. Claim(s) 7-9 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over CATES in view of CARSTENS and further in view of SOWERBY (US 2,873,870).

3.1. With respect to claim 7, CATES fails to teach the roller system having an actuated mechanism for deploying the rollers. SOWERBY teaches the roller system having an actuated mechanism for deploying the rollers (106)/(122). It would have been obvious to one of ordinary skill in the art to modify CATES in view of CARSTENS with the actuation system of SOWERBY in order to facilitate conversion between the endless track and wheels, thereby allowing the vehicle to quickly adjust to a different terrain.

3.2. With respect to claim 8-9, CATES additional teaches a swivel mechanism (Col. 3 Li. 39). CATES fails to teach four rollers, one in each corner. SOWERBY teaches four rollers, one in each corner. It would have been obvious to one of ordinary skill in the art to modify CATES in view of CARSTENS with the four rollers, one in each corner of SOWERBY in order to improve stability.

4. Claim(s) 13-16 and 19-20 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over CATES in view of THUNELL (US 4,278,395 A).

- 4.1. With respect to claim 13, CATES discloses a support surface (47), endless track (38), power source (33) , and roller (Col. 3 Li. 38-41). CATES fails to specify the details of the roller. It is well-known to cooperate an endless track propelling a load with a cylindrical roller to transfer a load to or from a support surface as demonstrated, for example, by THUNELL. It would have been obvious to one of ordinary skill in the art to modify CATES with a roller as taught by THUNELL in order to facilitate loading and unloading the load-supporting surface.
- 4.2. With respect to claim 14-16, 19-20 CATES additionally discloses a brake (Col. 3 Li 43-47), a roller system selectively deployable for displacing the apparatus without the endless track (49), portion of the endless track exposed beyond the support surface, the support surface pivotally displaceable, the support surface displaceable with respect to a height.
5. Claim(s) 17-18 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over CATES in view of THUNELL and further in view of SOWERBY.
- 5.1. With respect to claim 17-18, CATES additional teaches a swivel mechanism. CATES fails to teach four rollers, one in each corner. SOWERBY teaches four rollers, one in each corner. It would have been obvious to one of ordinary skill in the art to modify CATES in view of THUNELL with the four rollers, one in each corner of SOWERBY in order to improve stability.

## **V. Response to Applicant's Arguments**

Applicant's arguments entered 5/29/08 have been fully considered.



1. Applicant argues that claim 24 is proper since the mercury switch is enabled. The Examiner has not asserted otherwise, however this is not relevant to the requirements of 37 CFR 1.83(a) to show each feature capable of illustration.
2. Applicant argues that claim 23 is not anticipated by JESPERSEN because JESPERSEN fails to teach the claimed brake. This argument is not persuasive. Firstly Applicant is arguing limitations, “directly engages” which are not claimed. Secondly, the pinion, serving as a transmission component may be used to provide a braking force by engaging (through other components) the wheels and therefore may be considered a brake within the broadest reasonable interpretation of that term. Using transmission components to provide a braking force to inhibit unwanted movement on an inclined surface is well-known.
3. Applicant argues that the amendment entered 5/29/08 distinguishes the arm of claim 1 from that of CARSTENS because CARSTENS fails to teach the arm free of contact with the inclined surface. This argument is not persuasive. Arm (30) in and of itself may properly be considered an anti-roll device within the broadest reasonable interpretation of that term. CARSTENS therefore teaches a location of an anti-roll device where it may be free of contact with the inclined surface. No other components (e.g., other “anti-roll devices” that may be below the surface) of CARSTENS are cited to meet this limitation.
4. Applicant argues that claim 13, is not rendered obvious by CATES in view of THUNELL because the proposed combination would require a modification of the CATES framework. This argument is not persuasive. The test for obviousness is not the ease with which the features of the secondary reference THUNELL may be bodily incorporated into the structure of the primary reference CATES, the test is what the combined teachings of CATES and

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THUNELL would have suggested to those of ordinary skill in the art. Combining the teachings of CATES and THUNELL does not require the ability to combine their specific structures. One of ordinary skill in the art would know how to implement the teachings of CATES and THUNELL in order to arrive at a functional apparatus.

**VI. Conclusion**

1. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).
2. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.
3. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure.
4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles N. Greenhut whose telephone number is (571) 272-1517. The examiner can normally be reached on 7:30am - 4:00pm EST.

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5. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saul Rodriguez can be reached at (571) 272-7097. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.
6. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


CG

/C. N. G./

Examiner, Art Unit 3652

/Saúl J. Rodríguez/

Supervisory Patent Examiner, Art Unit 3652

<b>Application Number</b> 	<b>Application/Control No.</b>	<b>Applicant(s)/Patent under Reexamination</b>	
	10/731,110	LAVOIE, FABIEN	
	<b>Examiner</b>	<b>Art Unit</b>	
	CHARLES N. GREENHUT	3652	